

**NOTICE OF THE WATER QUALITY CONTROL COMMISSION'S
DECISION TO AMEND 20.6.4 NMAC, ADOPTING A TEMPORARY STANDARD FOR
THE CITY OF RATON'S WASTEWATER TREATMENT PLANT IN CASE NO. WQCC
19-46(R)**

This amendment authorizes a temporary water quality standard for discharges from the City of Raton Wastewater Treatment Plant to Doggett Creek. Doggett Creek is a perennial tributary with designated uses as listed under 20.6.4.99 NMAC. A temporary standard is a water quality standard and as such, the Water Quality Control Commission may adopt a temporary standard if the provisions under 20.6.4.10(F) can be demonstrated. A demonstration for a nutrient specific temporary standard was prepared by the New Mexico Environment Department Surface Water Quality Bureau for discharges from the City of Raton's Wastewater Treatment Plant to Doggett Creek. The findings of this demonstration supported the need for a temporary standard which was brought before the Water Quality Control Commission in a petition for a public hearing. Notice of the hearing was published 60 days prior to the hearing in accordance with 20.1.6.201 NMAC and a public hearing, docketed as WQCC 19-46(R) was held on March 10, 2020, to which the Water Quality Control Commission adopted the proposed change 12-0 as provided in the Statement of Reasons and Order dated April 7, 2020. There were no arguments made against the proposed rule change by either the public or the New Mexico Environment Department. In accordance with 74-6-6 NMSA 1978, the amendment adopted by the Water Quality Control Commission shall become effective no less than thirty days after its filing in accordance with the provisions of the State Rules Act (Chapter 14, Article 4 NMSA 1978]. In accordance with 1.24.10.16(E) NMAC, no rule shall be valid and enforceable until it is filed with the administrative law division and published in the New Mexico register. To ensure both requirements have been met, this rule will be made effective no earlier than its publication in the New Mexico Register or thirty days from filing with the administrative law division, whichever comes later.

A copy of the rule amendment is attached to this notice.

CONCISE EXPLANATORY STATEMENT

(1) Date the Board Adopted the Rules:

April 7, 2020

(2) Statutory Authority for Rule Promulgation:

Pursuant to the Water Quality Act ("Act"), NMSA 1978, Sections 74-6-1 to -17 (1967 as amended through 2019), and the *Standards for Interstate and Intrastate Surface Waters*, 20.6.4 NMAC, the Commission is authorized to "adopt water quality standards for surface and ground waters of the state based on credible scientific data and other evidence appropriate under the [Act] . . . [giving the] weight it deems appropriate to all facts and circumstances." §74-6-4(D). The Act authorizes the Commission to adopt regulations to "specify a standard of performance for new sources that reflects the greatest reduction in the concentration of water contaminants," giving due consideration of and weight to "the technical practicability and economic reasonableness of

reducing or eliminating water contaminants from the sources involved . . .” NMSA 1978, § 74-6-4(E).

(3) Reasons for Adopting Rule:

A temporary standard is appropriate in this case because all the following are met:

1. No Technology-based effluent limitations for nutrients exist. [20.6.4.10(F)(1)(c) NMAC];
2. The underlying designated use and criterion, including numeric interpretations of narrative criteria, are not attainable now or within a defined period of time, but may be attainable in the longer term [20.6.4.10(F)(1)(a) NMAC];
3. It is feasible to make incremental improvements in water quality during the proposed term of the temporary standard; and
4. The temporary standard will not result in any lowering of existing uses or currently attained ambient water quality [20.6.4.10(F)(1)(b) NMAC].

The Commission considered all facts and circumstances and concluded that the proposed amendments and temporary standard as adopted by the Commission does not cause injury or interference with health, welfare, animal and plant life, and property and the environment. The Commission further concluded that the proposed amendment and temporary standard as adopted by the Commission is technically practical, economically reasonable, and in the public interest.

These are amendments to 20.6.4 NMAC, Section 318, effective 05/22/2020.

20.6.4.318 CANADIAN RIVER BASIN: Doggett creek.

A. Designated uses: Warm water aquatic life, livestock watering, wildlife habitat and primary contact.

B. Criteria: The use-specific criteria in 20.6.4.900 NMAC are applicable to the designated uses, except that the following site-specific criteria apply: the monthly geometric mean of E. coli bacteria 206 cfu/100 mL or less, single sample 940 cfu/100 mL or less.

C. Discharger-specific temporary standard:

(1) Discharger: City of Raton wastewater treatment plant

(2) NPDES permit number: NM0020273, Outfall 001

(3) Receiving waterbody: Doggett creek, 20.6.4.318 NMAC

(4) Discharge latitude/longitude: 36° 52' 13.91" N / 104° 25' 39.18" W

(5) Pollutant(s): nutrients; total nitrogen and total phosphorus

(6) Factor of issuance: substantial and widespread economic and social impacts (40 CFR 131.10(g)(6))

(7) Highest attainable condition: interim effluent condition of 8.0 mg/L total nitrogen and 1.6 mg/L total phosphorus as 30-day averages. The highest attainable condition shall be either the highest attainable condition identified at the time of the adoption, or any higher attainable condition later identified during any reevaluation, whichever is more stringent (40 CFR 131.14(b)(1)(iii)).

(8) Effective date of temporary standard: This temporary standard becomes effective for Clean Water Act purposes on the date of EPA approval.

(9) Expiration date of temporary standard: no later than 20 years from the effective date.

(10) Reevaluation period: at each succeeding review of water quality standards and at least once every five years from the effective date of the temporary standard (20.6.4.10.F(8) NMAC, 40 CFR 131.14(b)(1)(v)). If the discharger cannot demonstrate that sufficient progress has been made the commission may revoke approval of the temporary standard or provide additional conditions to the approval of the temporary standard. If the reevaluation is not completed at the frequency specified or the Department does not submit the reevaluation to EPA within 30 days of completion, the underlying designated use and criterion will be the applicable water quality standard for Clean Water Act purposes until the Department completes and submits the reevaluation to EPA. Public input on the reevaluation will be invited during NPDES permit renewals or triennial reviews, as applicable, in accordance with the State's most current approved water quality management plan and continuing planning process.

(11) Timeline for proposed actions. Tasks and target completion dates are listed in the most recent, WQCC-approved version of the New Mexico Environment Department, Surface Water Quality Bureau's "Nutrient Temporary Standards for City of Raton Wastewater Treatment Plant, NPDES No. NM0020273 to Doggett Creek."

[20.6.4.318 NMAC - N, 05/22/2020]